

Introduced by Senator Lowenthal

February 27, 2009

An act to amend Sections 71200 and 71215 of the Public Resources Code, relating to ballast water management, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as introduced, Lowenthal. Public resources: ballast water management.

The Marine Invasive Species Act generally applies to all vessels carrying or capable of carrying ballast water into the coastal waters of the state after operating outside of the coastal waters of the state and to all ballast water and associated sediments taken on a vessel. The State Lands Commission is required to establish reasonable and appropriate fees, not exceeding \$1,000 for each voyage, to be used to carry out the provisions of the act. A fee schedule established is required, among other things, to take into account the impact of the fees on vessels from California operating in Hawaii and Alaska trades.

This bill would require that a fee schedule established take into account, among other things, the impact of fees on vessels from California operating in the Hawaiian, Alaskan, or other domestic noncontiguous trades. The bill would clarify that waters of the state means surface waters within the boundaries of the state as established by the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 71200 of the Public Resources Code is amended to read:

71200. Unless the context otherwise requires, the following definitions govern the construction of this division:

(a) “Ballast tank” means a tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(b) “Ballast water” means water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(c) “Board” means the State Water Resources Control Board.

(d) “Coastal waters” means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep, and rivers, lakes, or other water bodies navigably connected to the ocean.

(e) “Commission” means the State Lands Commission.

(f) “EEZ” means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles.

(g) “Exchange” means to replace the water in a ballast tank using either of the following methods:

(1) “Flow through exchange,” which means to flush out ballast water by pumping three full volumes of mid-ocean water through the tank, continuously displacing water from the tank, to minimize the number of original coastal organisms remaining in the tank.

(2) “Empty/refill exchange,” which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with mid-ocean waters.

(h) “Hull fouling” means the attachment or association of marine organisms to the submerged portion of a vessel or its appurtenances, including, but not limited to, sea chests, propellers, anchors, and associated chains.

(i) “Mid-ocean waters” means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(j) “Nonindigenous species” means any species, including, but not limited to, the seeds, eggs, spores, or other biological material

1 capable of reproducing that species, or any other viable biological
2 material that enters an ecosystem beyond its historic range,
3 including any of those organisms transferred from one country
4 into another.

5 (k) “Pacific Coast Region” means all coastal waters on the
6 Pacific Coast of North America east of 154 degrees W longitude
7 and north of 25 degrees N latitude, exclusive of the Gulf of
8 California. The commission may modify these boundaries through
9 regulation if the proponent for the boundary modification presents
10 substantial scientific evidence that the proposed modification is
11 equally or more effective at preventing the introduction of
12 nonindigenous species through vessel vectors as the boundaries
13 described herein.

14 (l) “Person” means an individual, trust, firm, joint stock
15 company, business concern, or corporation, including, but not
16 limited to, a government corporation, partnership, limited liability
17 company, or association. “Person” also means a city, county, city
18 and county, district, commission, the state, or a department, agency,
19 or political subdivision of the state, an interstate body, or the United
20 States and its agencies and instrumentalities, to the extent permitted
21 by law.

22 (m) “Sediments” means matter settled out of ballast water within
23 a vessel.

24 (n) “Submerged portion of a vessel” means all parts of a vessel’s
25 hull and structures that are submerged in water when the vessel is
26 loaded to the deepest permissible legal draft.

27 (o) “Waters of the state” means surface waters, including saline
28 waters, that are within the boundaries of the state *as established*
29 *by Section 2 of Article III of the California Constitution*.

30 (p) “Vessel” means a vessel of 300 gross registered tons or
31 more.

32 (q) “Voyage” means any transit by a vessel destined for a
33 California port or place from a port or place outside of the coastal
34 waters of the state.

35 SEC. 2. Section 71215 of the Public Resources Code is
36 amended to read:

37 71215. (a) (1) The Marine Invasive Species Control Fund is
38 hereby created. The money in the fund, upon appropriation by the
39 Legislature, shall be used solely to carry out this division.

(2) All money accruing to the Exotic Species Control Fund shall be transferred to the Marine Invasive Species Control Fund.

(b) (1) The commission shall administer the fund in accordance with this chapter.

(2) The commission shall establish, through regulation, a reasonable and appropriate fee solely for the purposes of carrying out this division. The fee may not exceed one thousand dollars (\$1,000) for each voyage, as described in subdivision (c). This amount may be adjusted for inflation every two years.

(3) In establishing fees, the commission shall consult with a technical advisory group made up of interested persons, including, but not limited to, shipping and port representatives.

(4) The commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. ~~Any fee schedule established, including the level of fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.~~

(5) A fee schedule established, including the level of fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaiian, Alaskan, or other domestic noncontiguous trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.

(c) The State Board of Equalization, in accordance with Part 22.5 (commencing with Section 44000) of Division 2 of the Revenue and Taxation Code, shall collect the fee from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. That fee may not be assessed on ~~any~~ a vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port or place.

(d) Notwithstanding any other provision of law, all fees imposed pursuant to this section shall be deposited into the Marine Invasive Species Control Fund.

1 (e) Notwithstanding any other provision of law, all penalties
2 and payments collected for violations of any requirements of this
3 division shall be deposited into the Marine Invasive Species
4 Control Fund.

5 SEC. 3. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the Constitution and shall go into
8 immediate effect. The facts constituting the necessity are:

9 In order to clarify state law regarding the boundaries of waters
10 of the state, and thereby minimize unnecessary and costly litigation
11 that may adversely impact California's state waters, it is necessary
12 for this act to take effect immediately.